

Remarks/Arguments

Claims 1-31 are pending in this Application. In the Office Action mailed April 11, 2006, the Examiner requested the claims be restricted to one of the following inventions that include:

- I. Claims 28-31, drawn to a semiconductor device, classified in class 257, subclass 288; and
- II. Claims 1-27, drawn to a method of forming a semiconductor device, classified in class 438, subclass 772.

The Examiner further indicated that should Group II claims be elected, the Application was considered to contain claims directed to patentably distinct species that include:

- II-A. The method wherein the substrate is unspecified and wherein a precursor is deposited over the passivated surface.
- II-B. The method wherein the substrate is Si (100) and wherein the resulting dielectric from the oxidation process has a dielectric constant greater than 4.
- II-C. The method wherein the substrate is SiGe (100).

Applicants respectfully address the Examiner's requests below.

Restriction/Election

On page 2 of the Office Action, the Examiner requested that the claims be restricted to one invention. Applicants hereby provisionally elect Group II—1-27, drawn to a method of forming a semiconductor device—with traverse for continued prosecution. In addition, Species II-A (drawn to the method wherein the substrate is unspecified and wherein a precursor is deposited over the passivated surface) is provisionally elected with traverse for continued prosecution. Claims 28-31 are provisionally withdrawn from further prosecution. Any claims cancellation will be made upon the filing of a divisional application.

Traversal is argued on the grounds that a thorough search of the subject matter of Claims 1-27 would necessarily include a search of similar subject matter as that of Claims 28-31, because all claims are drawn to a semiconductor substrate surface with valence-mending and deposition on said surface. Given the unifying subject matter of all the independent claims, including the (materially) same composition and preparation (e.g., a

semiconductor substrate surface, valence mending and deposition on said surface), Applicant points out that any art identified within Group II would necessarily be similar to that identified for Group I. Accordingly, Applicant submits that, as claimed, the device is not materially distinct from the method of making. Because the inventions are not considered distinct for the reasons set forth above, examination of Claims 28-31 on the merits would impose no additional burden on the Patent Office. *See* MPEP 803.

Applicant further submits that Species II-A, II-B and II-C are not patentably distinct because each are obvious variants that describe a portion of the claimed invention. Moreover, the species are connected in design, operation, and effect of the method. The Examiner has not provided evidence to the contrary. In particular, the Examiner has not provided evidence that the species are distinct (two-way distinctness) by showing that any intermediate or final product does not overlap in scope or are not obvious variants. In addition, the Examiner has not provided evidence that the invention does not require the particulars of the subcombination as claimed for patentability, and that any subcombination can be shown to have utility either by itself or in another materially different combination. Accordingly, Applicant submits that each species are patentably distinct invention and requests removal of the species restriction.

Conclusion

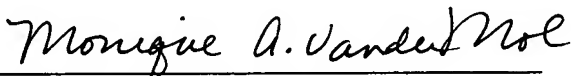
In light of the remarks and arguments presented above, Applicant respectfully submits that the claims pending in this application are in condition for allowance. Favorable consideration for and allowance of the pending claims are therefore respectfully requested.

No fees are believed to be due with this Amendment. If this is incorrect, Applicant hereby authorizes the Commissioner to charge such fees, other than the issue fee, that may be required by this paper to Deposit Account 07-0153.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Dated: May 5, 2006.

Respectfully submitted,
GARDERE WYNNE SEWELL LLP



Monique A. Vander Molen
Registration No. 53,716

1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
(214) 999-4330 – Telephone
(214) 999-3623 – Facsimile